

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re CASA COLONIAL LIMITED
PARTNERSHIP,

Debtor,

Case Nos. 07-13895
Honorable Patrick J. Duggan
(Ch. 7 Case No. 03-31410)

OPINION AND ORDER

This matter arose as an appeal from proceedings in the United States Bankruptcy Court for the Eastern District of Michigan. It presently is before the Court on the bankruptcy trustee's attempts to collect \$31,641.93 that the Sixth Circuit Court of Appeals awarded her as sanctions, attorney's fees, and costs against Keith Mitani. *In re Casa Colonial Ltd. P'ship*, 369 F. App'x 704 (6th Cir. 2010). More specifically, it is before the Court on the Trustee's motion to find Mr. Mitani in contempt of court and Mr. Mitani's responding motion seeking the appointment of counsel.

As described in this Court's opinion and order dated October 25, 2011, Mr. Mitani has engaged in varying frivolous tactics to avoid paying the amount awarded to the bankruptcy trustee, including failing to produce documents requested by the trustee to determine Mr. Mitani's ability to pay and refusing to answer questions at a previously scheduled creditor's exam. In its October 25 decision, this Court ordered Mr. Mitani to produce the documents requested by the trustee within ten days and submit to a creditor's exam to be re-scheduled prior to December 8, 2011. The Court further scheduled a hearing on the Trustee's motion to find Mr. Mitani in contempt of court for December 14, 2011. Because the Trustee asks the Court in her motion to incarcerate Mr. Mitani until he

complies with the Court's orders, Mr. Mitan filed the pending motion for appointment of counsel in response.

The Supreme Court has interpreted the due process provisions of the Fifth and Fourteenth Amendments "as requiring, in many situations, that one who may be deprived of life or liberty in a court proceeding be afforded a reasonable opportunity to obtain counsel." 17 Am. Jur. 2d Contempt § 175 (2010); *see also Holt v. Virginia*, 381 U.S. 131, 85 S. Ct. 1375 (1965). If the risk to an individual's liberty is real, the right to counsel attaches regardless of whether the proceeding is civil or criminal in nature. *See Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 25, 101 S. Ct. 2153, 2158-59 (1981). Where the individual is indigent, counsel must be appointed to represent him or her. *See Sevier v. Turner*, 742 F.2d 262 (6th Cir. 1984). Mr. Mitan submitted an affidavit in support of his motion in which he asserts that he lacks the financial ability to hire counsel to represent him in this case.¹ (Doc. 64 Ex. A.)

The Court's hope and expectation is that Mr. Mitan will comply with its non-onerous orders without having to first spend time in jail. To the extent Mr. Mitan does not intend to comply and wishes to have counsel appointed to represent him at the hearing, he should complete and submit to this Court the attached Financial Affidavit on or before November 30, 2011. The Court will decide whether he is entitled to the appointment of counsel at that time.

¹In light of Mr Mitan's previous conduct in this matter and other proceedings, the Court is requiring him to provide further evidence of his asserted indigency.

SO ORDERED.

Date: November 14, 2011

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Thomas J. Budzynski

Keith J. Mitani
P.O. Box 251597
West Bloomfield, MI 48325-1597

CJA 23

FINANCIAL AFFIDAVIT

Rev. 5/98

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES

☐ MAGISTRATE☐ DISTRICT☐ APPEALS COURT or☐ OTHER PANEL (Specify below)

IN THE CASE OF

FOR

AT

LOCATION NUMBER

V.S.

PERSON REPRESENTED (Show your full name)

- 1 ☐ Defendant—Adult
 2 ☐ Defendant - Juvenile
 3 ☐ Appellant
 4 ☐ Probation Violator
 5 ☐ Parole Violator
 6 ☐ Habeas Petitioner
 7 ☐ 2255 Petitioner
 8 ☐ Material Witness
 9 ☐ Other

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

CHARGE/OFFENSE (describe if applicable & check box →)

☐ Felony☐ Misdemeanor**ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY**

ASSETS	EMPLOYMENT	Are you now employed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Am Self-Employed Name and address of employer: _____ IF YES , how much do you earn per month? \$ _____ IF NO , give month and year of last employment How much did you earn per month? \$ _____
	OTHER INCOME	If married is your Spouse employed? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES , how much does your Spouse earn per month? \$ _____ If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____
	CASH	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES , GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES
	PROPERTY	Have you any cash on hand or money in savings or checking accounts? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES , state total amount \$ _____ Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input type="checkbox"/> No IF YES , GIVE THE VALUE AND \$ DESCRIBE IT

OBLIGATIONS & DEBTS	DEPENDENTS	MARITAL STATUS <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> SEPARATED OR DIVORCED Total No. of Dependents _____ List persons you actually support and your relationship to them _____ _____ _____																			
	DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	<table border="1"> <thead> <tr> <th>APARTMENT OR HOME:</th> <th>Creditors</th> <th>Total Debt</th> <th>Monthly Paymt.</th> </tr> </thead> <tbody> <tr> <td>_____</td> <td>_____</td> <td>\$ _____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>\$ _____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>\$ _____</td> <td>\$ _____</td> </tr> <tr> <td>_____</td> <td>_____</td> <td>\$ _____</td> <td>\$ _____</td> </tr> </tbody> </table>	APARTMENT OR HOME:	Creditors	Total Debt	Monthly Paymt.	_____	_____	\$ _____	\$ _____	_____	_____	\$ _____	\$ _____	_____	_____	\$ _____	\$ _____	_____	_____	\$ _____
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I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) _____

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED)